

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
New Part 4 of the Commission's Rules)	
Concerning Disruptions to Communications)	ET Docket No. 04-35
)	

**PETITION FOR RECONSIDERATION AND CLARIFICATION
of the
ORGANIZATION FOR THE PROMOTION AND
ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES**

I. INTRODUCTION

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits this petition for reconsideration and clarification of the August 19 Report and Order in the above-captioned proceeding.¹ OPASTCO is a national trade association representing approximately 560 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 3.5 million customers. All OPASTCO members are rural telephone companies as defined in 47 U.S.C. §153(37).

Reconsideration is merited, in part, due to procedural issues that prevented the opportunity for public comment on the Report and Order's information collection requirements. According to instructions previously provided in the Federal Register, the

¹ *New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, ET Docket No. 04-35, Report and Order and Further Notice of Proposed Rulemaking, FCC 04-188 (rel. Aug. 19, 2004)

public could provide comments on the Report and Order's information collection requirements on or before January 3, 2005.² However, a subsequent Federal Register notice, released one day prior to the established comment deadline, announced that the Office of Management and Budget (OMB) had already approved the information collection requirements.³ In addition, the Report and Order's rules became effective January 3, 2005.⁴ These procedural deficiencies have denied the right of concerned parties to provide important insights regarding the information collection requirements.

OPASTCO agrees with the Federal Communications Commission (FCC, Commission) that there are public benefits to reporting incidents of major service disruptions. However, the rules for information collection found in the Report and Order raise several concerns. Specifically, these concerns relate to (1) the practicality of the 120 minute deadline for initial notification; (2) the lack of clarity regarding when the 120 minute threshold for reporting should begin; and (3) the fact that the burden estimate does not account for information collection burdens imposed by provisions related to special facilities and "best practices."

(Report and Order).

² *Federal Communications Commission, 47 CFR Parts 0, 4 and 63, ET Docket No. 04-35; FCC 04-188, Disruptions to Communications*, 69 Fed. Reg. 70316 (Dec. 3, 2004).

³ *Federal Communications Commission, 47 CFR Parts 0, 4 and 63, ET Docket No. 04-35; FCC 04-188, Disruptions to Communications*, 69 Fed. Reg. 78338 (Dec. 30, 2004).

⁴ Additional confusion stems from another Federal Register notice that did not apply solely to ET Docket No. 04-35, and contrary to the Dec. 3 Federal Register, indicated that comments to the OMB on the information collection requirements were due on Dec. 23, 2004. *See, Federal Communications Commission, Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval*, 69 Fed. Reg. 68146 (Nov. 23, 2004). However, according to both the Dec. 30 Federal Register notice and an FCC Public Notice, the OMB approved the information collection requirements on Dec. 21, 2004. *See, Office Of Engineering And Technology Announces Electronic Reporting Procedures For The Outage Reporting System Created By New Part 4 Of The Rules*, Public Notice, DA 04-4059 (rel. Dec. 28, 2004). Therefore, the OMB approved the information collection requirements two days prior to the Dec. 23 deadline provided by the Nov. 23 Federal Register notice, and thirteen days prior to the Jan. 3 deadline subsequently provided by the Dec. 3 Federal Register. Regardless of which deadline applied, approval was prematurely granted, before the public had opportunity to comment.

OPASTCO respectfully requests that the FCC rescind the applicability of the Report and Order's information collection requirements to rural telephone companies, until such time as alternatives suitable to rural ILECs are crafted, clarification regarding the 120 minute threshold is provided, and a more thorough Paperwork Reduction Act (PRA) analysis is performed.

II. IT MAY BE IMPOSSIBLE FOR RURAL CARRIERS TO COMPLY WITH THE REPORT AND ORDER'S 120 MINUTE DEADLINE

Compliance with the 120 minute deadline for a "bare-bones" notification of a reportable outage⁵ may often be impossible for rural carriers serving sparsely populated areas.⁶ Contrary to the Report and Order's assertion that "it is practically inconceivable that small business [sic] employing 25 or fewer employees will ever be required to file an outage report,"⁷ outages of sufficient longevity to be reportable under the new rules are not unheard of for rural carriers. While such disruptions are rare, extreme weather conditions have been known to cause significant disruptions to even the best-maintained networks. Many rural carriers are located in areas such as Alaska, New England, and the upper Mid-West that are subject to severe snow and ice storms. Rural ILECs are also prevalent in the Great Plains region, where tornadoes tend to occur. Many are also located along major rivers or in coastal regions that periodically flood and/or have hurricanes, to devastating effect.

The Report and Order determined that an outage affecting 900,000 user-minutes is reportable.⁸ Therefore, as an example, if a rural LEC with 7,500 access lines

⁵ Report and Order, para. 5.

⁶ See, comments of the Rural ILECs in ET Docket No. 04-35, pp. 3-6 (fil. May 25, 2004).

⁷ Report and Order, para. 169.

⁸ *Ibid.*, para. 55.

experiences a company-wide outage lasting 120 minutes, then it would be reportable. The requirement for even a “bare bones” notification within 120 minutes ignores the geographic reality of the areas served by many rural carriers. In sparsely populated rural service areas, it may take more than 120 minutes even in good weather for personnel to arrive at the location of potentially malfunctioning or damaged equipment to assess the situation.⁹

The Report and Order incorrectly states that the 120 minute requirement will “not impose any significant burden on the provider’s restorative efforts.”¹⁰ While this may arguably be true for large providers, it is simply not the case with respect to rural carriers. For many rural ILECs operating in extreme geographic isolation and/or extreme weather conditions, access to working Internet or fax communications, or to courier services,¹¹ would not be feasible within 120 minutes once an outage has occurred. For a rural LEC with few employees, dispatching even one staff member during a service outage to reach an area where communications are functioning for no other purpose than to meet the 120 minute requirement, would indeed impair restoration efforts. Furthermore, geographic isolation and extreme weather conditions may often prevent staff from reaching areas with functional communications within the limited time provided.

The Rural ILECs suggested allowing rural carriers to report qualifying outages orally within 24 hours.¹² This is not only far more achievable than providing notice

⁹ This further assumes that roads exist. A number of locations served by rural ILECs are accessible only by air or boat, and trips may be restricted to certain times of the year when conditions permit travel. *See, The Rural Difference*, Rural Task Force White Paper 2 (Jan. 2000), pp. 16-17 (available at <http://www.wutc.wa.gov/rtf>).

¹⁰ Report and Order, para. 75.

¹¹ *Id.*, paras. 75, 166.

¹² Comments of the Rural ILECs, p. 4. *See also* Rural ILECs’ comments on the Initial Paperwork Reduction Act Analysis, pp. 2-3 (fil. May 25, 2004); Rural ILECs’ comments on the Initial Regulatory

within 120 minutes, but also would address the ambiguity (discussed below) regarding how to calculate when the 120 minute threshold applies. OPASTCO therefore requests that the Commission nullify the applicability of the information collection rules to rural ILECs until a workable alternative, such as the one suggested by the Rural ILECs, is included.

III. IT IS NECESSARY TO CLARIFY WHEN THE 120 MINUTE REPORTING THRESHOLD BEGINS

The Report and Order is ambiguous with regard to when the 120 minute timeframe begins. The Report and Order states that reports must be filed within two hours of the provider's "first knowledge" or "discovery" of the outage.¹³ However, the Report and Order does not address situations where an outage may not reach the reportable threshold when it is initially discovered. For example, a rural ILEC with 2,500 access lines experiencing a company-wide outage would not reach the 900,000 user-minute threshold for six hours. Thus, under such a scenario, the carrier will not know after 120 minutes whether the outage will reach a "reportable" level.

It may well be argued that the 120 minute requirement does not apply until the full 900,000 user-minutes are reached. In the example with a company serving 2,500 access lines, this interpretation would presumably permit the ILEC to file its first report eight hours after "first knowledge" of the outage. Yet as it stands, the Report and Order's language makes the validity of this interpretation uncertain. OPASTCO respectfully requests clarification of how to determine when the 120 minute threshold is reached.¹⁴

Flexibility Analysis, p. 2 (fil. May 25, 2004).

¹³ Report and Order, paras. 75, 166.

¹⁴ However, as noted in the previous section, alternative requirements, such as allowing rural ILECs to orally report outages within 24 hours, could largely alleviate the ambiguity.

IV. THE BURDEN ESTIMATE DOES NOT ACCOUNT FOR PAPERWORK REQUIRED TO COMPLY WITH PROVISIONS RELATED TO SPECIAL FACILITIES AND “BEST PRACTICES”

The Report and Order’s Final Paperwork Reduction Act (PRA) analysis¹⁵ is deficient.¹⁶ It fails to account for the burdens associated with the rule in §4.5(b) that requires rural ILECs to determine, on an annual basis, whether they serve “special facilities” that are listed by the National Communications System, and in the Federal Aviation Administration’s National Plan of Integrated Airports Systems.¹⁷ Becoming familiar with these lists, and keeping up to date with changes on an ongoing basis, would represent a significant burden to rural carriers. This should be reflected in the Final PRA analysis.

Additionally, §4.11 of the rules includes provisions requiring carriers to fill out the reporting form, a template of which is provided in Appendix C of the Report and Order. The reporting form requires carriers to: (1) list the specific best practices, as identified by the Network Reliability and Interoperability Council (NRIC), that might have prevented or reduced the effects of the outage; (2) list the best practices that mitigated the outage; and (3) provide an analysis of best practices. The Final PRA analysis does not account for the fact that there are over 700 best practices that NRIC has identified and many of them may not be applicable to rural carriers. For a rural carrier with few employees, wading through hundreds of best practices in order to single out the

¹⁵ Report and Order, paras. 162-171.

¹⁶ It is notable that the Final PRA analysis at para. 164 recognizes the comments of ten service providers or their representatives (not including the thirty-three Rural ILECs) regarding increased burdens. These largely specific concerns are then supposedly sufficiently countered at para. 165 with nothing more than the vague remarks of two regulatory bodies, which do not actually provide telecommunications services to customers.

¹⁷ Under §4.5(c) of the rules, carriers are required to report any outage that lasts 30 minutes at a qualifying airport. As previously noted, simply arriving at a location to investigate a possible outage can take much

very few that might apply to a specific outage, would take many hours.

Because the Final PRA analysis does not consider the significant burdens that the rules impose upon rural carriers, OPASTCO requests that the FCC rescind the applicability of the information collection rules on rural carriers until a more thorough Final PRA analysis is performed.

V. CONCLUSION

Because the Report and Order (1) does not account for the fact that the 120 minute deadline will often be unachievable for rural carriers; (2) is ambiguous about how to determine when the 120 minute deadline is reached; and (3) does not account for the burdens imposed by information collection requirements associated with special facilities and NRIC's best practices, the Commission should declare the Report and Order's rules to be inapplicable to rural carriers until these deficiencies are addressed.

longer than this in sparsely populated areas.

Respectfully submitted,

**THE ORGANIZATION FOR THE PROMOTION
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January 3, 2005

CERTIFICATE OF SERVICE

I, Stephen Pastorkovich, hereby certify that a copy of the Petition for Reconsideration and Clarification by the Organization for the Promotion and Advancement of Small Telecommunications Companies was sent by first class United States mail, postage prepaid, or via e-mail on this, the 3rd day of January, 2005, to those listed on the attached sheet.

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